No. 03-19-00198-CV

In the Court of Appeals
Third Judicial District

Madeleine Connor,
Appellant

vs.

Douglas Hooks,
Appellee

From the 201st District Court of Travis County, Texas
Cause number D-1-GN-18-005130
The Honorable Catherine Mauzy, District Judge Presiding

APPELLANT'S REPLY BRIEF

MADELEINE CONNOR
Texas Bar No. 24031897
P.O. Box 161962
Austin, Texas 78716-1962
Phone (512) 289-2424
Fax (512) 329-5229
ATTORNEY FOR APPELLANT

TO THE HONORABLE THIRD COURT OF APPEALS:

COMES NOW Appellant Madeleine Connor and files this her Reply Brief. Appellee's Brief does not overcome Appellant's contentions that this Court should (1) vacate the trial court's vexatious litigant order for want of jurisdiction and render dismissal of the Rule 202 suit, or (2) alternatively, reverse the trial court's vexatious litigant order for an abuse of discretion. Likewise, Appellee does not adequately counter Appellant's argument that the statute is unconstitutional on its face.

In this Reply, Appellant supports the foregoing as follows:

REPLY TO ISSUE ONE:

In issue one, Connor contended that the trial court abused its discretion in issuing a vexatious litigant finding against her, as neither the order nor the findings of fact and conclusions of law was supported by sufficient evidence in the record on any criteria under the statute. *See* Tex. Civ. Prac. & Rem. Code § 11.054; *Leonard v. Abbott*, 171 S.W.3d 451, 459 (Tex. App.—Austin 2005, pet. denied); CR 266-68; 280-286.

Again, a court may find a plaintiff a vexatious litigant if the defendant shows there is not a reasonable probability the plaintiff will prevail in the litigation *and* that one of the grounds listed in paragraphs (1), (2) and (3) of § 11.054 is satisfied. *See*

Turner v. Grant, 2011 WL 5995538 (Tex. App.—Amarillo 2011, no pet.) (mem. op.) (citing § 11.054(1) (plaintiff has filed multiple suits in seven-year period); 11.054(2) (plaintiff repeatedly has attempted to relitigate claim); 11.054(3) (plaintiff has been declared vexatious litigant by another court in similar proceeding)).

A trial court abuses its discretion when it renders an arbitrary and unreasonable decision lacking support in the facts or circumstances of the case, or when it acts in an arbitrary or unreasonable manner without reference to guiding rules or principles. *Restrepo v. Alliance Riggers & Constructors, Ltd.*, 538 S.W.3d 724, 750 (Tex. App.—El Paso 2017, no pet.) (citing *Samlowski v. Wooten*, 332 S.W.3d 404, 410 (Tex. 2011)).

Section 11.054(1)-(3) specifies three alternative grounds necessary to a vexatious litigant determination. *See Turner*, 2011 Tex. App. LEXIS 9250 at *7. *See id*. At least one must be found. *See id*. § 11.054(1)-(3) ("no evidence supported a statutory ground for a vexatious litigant finding").

As the movant in the trial court below, Appellee failed in his burden to establish record evidence of Chapter 11 criteria. *Nabelek v. Johnson*, 2005 Tex. App. LEXIS 2591, at *9-10 (Tex. App.—San Antonio 2005, pet. denied) (mem. op.).

As explained in Appellant's opening brief, the trial court's findings of fact and conclusions of law reflect three separate and independent grounds for the vexatious litigant finding, that: **(a)** Connor had "previously been declared to be a vexatious litigant by a … federal court in an action or proceeding based on the same or substantially similar facts, transition, or occurrence" pursuant to Tex. Civ. Prac. & Rem. Code § 11.054(3), CR 284-85; **(b)** "Connor had commenced, prosecuted, or maintained at least five litigations as a pro se litigant other than in small claims court that have been finally determined adversely to [her]" under Tex. Civ. Prac. & Rem. Code § 11.054(1); and **(c)**, after a litigation has been finally determined against Connor, Connor had repeatedly relitigated or attempted to relitigate the claim against the same defendant(s) under Tex. Civ. Prac. & Rem. Code § 11.054(2). See CR 282-284. The Appellee failed to point the Court to any evidence, or otherwise adequate evidence, to support a vexatious litigant finding. Therefore, the Court must reverse the trial court's order.

Sub-issue One A (restated): The record evidence is legally and factually insufficient to support the vexatious litigant finding under Tex. Civ. Prac. & Rem. Code § 11.054(3).

Appellee did not satisfy his burden to point out record evidence that Connor had been previously "declared" a vexatious litigant in a case against Douglas Hooks relating to the false AVVO review, about which she sought pre-suit depositions. Specifically, Hooks failed to present evidence to the trial court that Connor had "previously been ***declared*** to be a vexatious litigant by a state or federal court in an action or proceeding based ***on the same or substantially similar facts, transition, or occurrence***." *See* Tex. Civ. Prac. & Rem. Code § 11.054(3) (emphasis added).

Appellee's brief does not overcome Connor's Sub-Issue One A argument that there was "no *declaration*, finding, announcement or formal statement by the Western District of Texas making clear or manifest that Connor is a vexatious litigant." CR 21-29. Appellee similarly does not propose an alternate definition of "declaration" that Connor cited from two editions of Black's Law Dictionary 409 (6th ed. 1990) ("Declaration") ("A formal statement, proclamation or announcement, esp. when embodied in an instrument."); Black's Law Dictionary 409 (6th ed. 1990) ("Declare") ("To make known, manifest, or clear….To publish…to announce clearly some opinion or resolution.").

Appellee further does not contest that the suit in which the Western District certainly used the words "vexatious," did not contain a single claim against Hooks,

which is required by the statute. *See* Tex. Civ. Prac. & Rem. Code § 11.504(3); CR 21-29; *Scott v. Tex. Dep't of Crim. Justice-Institutional Div.*, 2008 Tex. App. LEXIS 8941 at *5 (Tex. App.—Corpus Christi 2008, no pet.) (mem. op.) ("the trial court…relied heavily on the 343rd District Court's finding that Scott was a vexatious litigant in cause number B-05-1223-CV-C" but noted that the movant failed to show "that the underlying facts in cause number B-05-1223-CV-C are substantially similar or arose out of the same occurrence or transaction as the present matter.").

Hooks fails to distinguish adequately *Scott* in his brief—i.e., that that the Rule 202 suit and the Western District suit he identified—were substantially the same. *See id*. Therefore, because Hooks failed in his burden to show that the *present case* and the *federal case* involved substantially similar facts or occurrences, section 11.054(3) was not applicable, and this Court should hold that the trial court abused its discretion in entering the vexatious litigant order under § 11.054(3) against Connor.

Sub-issue One B (restated): The record evidence is legally and factually insufficient to support the vexatious litigant finding under Tex. Civ. Prac. & Rem. Code § 11.054(1).

In his Brief, Appellee did not illuminate record evidence that, at the time of the filing of his Chapter 11 motion, that Connor, ***in the seven-year period immediately preceding the date the defendant makes the motion under Section 11.051***, had commenced, prosecuted, or maintained at least five litigations as a pro se litigant other than in a small claims court that have been: (A) finally determined adversely to the her; (B) she permitted cases to remain pending at least two years without having been brought to trial or hearing; or (C) was determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure. *See* Tex. Civ. Prac. & Rem. Code § 11.054(1). As the statute requires, Hooks did not, and could not, develop record evidence that any of the criteria applied to Connor at the time that he filed his motion.

For the Court's convenience, Connor reiterates here that, in the trial court's Findings of Fact and Conclusions of Law, the court lists eighteen purported criteria, but the citations relate to only three cases—or four, if one cause is counted as a severance that was not objected to, i.e., ¶ 18, k. See CR 284 ¶ 18, k.

Nor did Hooks provide this Court or the lower court with record evidence that any one of the cases listed was final **when measured from** "the date the defendant ma[de] the motion." CR 13-97, 283-284 ¶ 18, a-r; Tex. Civ. Prac. & Rem. Code §

11.054(1). Thus, Appellee has not overcome the dearth of record evidence to show that Connor, ***at the time of Hooks' motion***, was in violation of the criteria under the statute of (essentially) losing five cases in seven years. *See* Tex. Civ. Prac. & Rem. Code § 11.054(1)(A)-(C). [1]

In the interest of brevity, Connor points out that Hooks did not demonstrate to this Court that the three cases allegedly "finally determined"/"lost" and divided up into motions, rehearings, etc., were not improper "double counting." *See Retzlaff v. GoAmerica Communs. Corp.*, 356 S.W.3d at 700 ("We are counting only the appeals, not the underlying trial court cases. Because no double-counting is occurring here, we express no opinion regarding [Retzlaff's double-counting] concern."); Appellant's Br. 17-20 ("In sum, the cases listed in the court's finding of fact all derived from fewer than four original cases; none had been "finally determined" against Connor at the time of Hooks' motion, and one was not "commenced, prosecuted, or maintained" by Connor. *See* Tex. Civ. Prac. & Rem. Code § 11.054(1)."). This Court should reverse the vexatious litigant finding under

[1] Hooks' brief did not point the Court to evidence that the cases listed in his motion had been found frivolous or groundless, or had languished more than two years before being brought to trial or a hearing. Therefore, this Court must hold that the trial court abused its discretion in finding Connor to be vexatious under Tex. Civ. Prac. & Rem. Code § 11.054(1).

§ 11.054(1) because Appellee does not address adequately in his brief how all of three or four cases, carved up, severed, and surely not "finally determined" ***at the time the motion was filed***, squares with Chapter 11. *See Retzlaff*, 356 S.W.3d at 700 ("We are counting only the appeals, not the underlying trial court cases. Because no double-counting is occurring here, we express no opinion regarding [Retzlaff's double-counting] concern."). Therefore, this Court should grant Appellant's Issue One, sub-issue B.

Sub-issue One C (restated): The record evidence is legally and factually insufficient to support the cursory vexatious litigant finding under Tex. Civ. Prac. & Rem. Code § 11.054(2). (CR 285 ¶ 23).

Hooks does not point to record evidence in his Brief, showing that under Tex. Civ. Prac. & Rem. Code § 11.054(2), Connor repeatedly relitigated the same final claims against Hooks. See CR 285 ¶ 23. This finding by the trial court was not moved upon in writing or orally by Hooks, and for this reason alone (lack of notice) the order must be vacated. *Id*; CR 16 (Hooks makes no argument in his motion, for example, that the likely benefit of allowing discovery outweighs the burden or expense); *Turner v. Grant*, 2011 Tex. App. LEXIS 9250, *7-8, 2011 WL 5995538 ("Turner's disclosure of prior lawsuits does not provide evidence he had attempted

to relitigate matters previously determined, so there is no evidence for making a vexatious litigant determination under § 11.054(2).”). Because Hooks points to no evidence in the record to contradict Appellant’s Sub-issue One C, the finding must be reversed.

In sum, Hooks, in his responsive brief, fails to isolate any evidence of the three criteria under the statute that resulted in findings by the trial under Tex. Civ. Prac. & Rem. Code § 11.054. Therefore, Issue for Review One—and all sub-issues—must be granted. *See Leonard v. Abbott*, 171 S.W.3d 451, 459 (Tex. App.—Austin 2005, pet. denied); *Turner v. Grant*, 2011 Tex. App. LEXIS 9250, *7-8, 2011 WL 5995538 (“Of the lawsuits Turner listed, only two were commenced, prosecuted, or maintained in the seven-year…[t]here is thus no evidence for making a vexatious litigant determination under § 11.054(1)”).

REPLY TO ISSUE TWO (restated): The trial court’s order declaring Appellant to be a vexatious litigant must be reversed because the trial court failed to issue a finding and/or conclusion of law, which is required under Tex. Civ. Prac. & Rem. Code § 11.054, that Appellee showed “there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant….”

Hooks claims in his brief that Connor somehow waived this issue because she did not challenge the trial court's absence of this finding. However, Hooks provides no authority – or inapposite authority – to support his waiver theory. See Appellee's Br. at 19-22.

The statute is clear: a motion to declare a person vexatious is measured from the date of the filed motion. *See* Tex. Civ. Prac. & Rem. Code § 11.054(1). The correct analysis, therefore, is whether the non-movant (Connor) could not reasonably prevail in obtaining the pre-suit oral depositions requested at the time Hooks filed his Ch. 11 motion. *See* Tex. Civ. Prac. & Rem. Code § 11.054 ("there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant….)" Thus, whether Petitioner later non-suited is of no moment. The question for this Court is (and was for the trial court) whether the burden of Connor's request for pre-suit depositions outweighed the burden or expense to Hooks, at the time he filed his motion—not some later date when Connor voluntarily non-suited. *See* Rule 202.4(a)(2) (pre-suit deposition to be taken to investigate a potential claim or suit may be ordered only if the trial court finds that the likely benefit to petitioner of taking such depositions outweighs the burden or expense imposed by the

procedure). Hooks made no Rule 202 weight vs. burden argument in his pleadings, in the trial court, or in the record, which was his burden

The trial court here did not issue a conclusion of law (or a finding of fact) that the burden on Hooks *outweighed* the facts Connor alleged in support of her Rule 202 relief. It simply was not brought up in Hooks' motion or in the trial court. Rather, the record reflects that Hooks made no substantive motion or attack of any kind on the propriety of the Rule 202 relief sought by Connor. CR 4-11; 16 (conclusory statement that "Petitioner would not prevail in any future defamation litigation…"). Appellee's Chapter 11 motion was completely devoid of any request that the trial court *find* that Connor could not prevail in her bid to have Hooks deposed under Rule 202. *See* Tex. R. Civ. P. 202 (setting out procedures and the required form of a Rule 202 motion, which was entirely unchallenged by Hooks); CR 280-286; CR 16 (no legal attack on the Rule 202 proceeding or form of the petition).

Again, the defendant seeking a vexatious litigant declaration bears the burden of establishing ***both parts of the test set out in section 11.054*** of the Texas Civil Practice and Remedies Code. *See Amir-Sharif v. Quick Trip Corp.*, 416 S.W.3d at 919 (citing Tex. Civ. Prac. & Rem. Code Ann. § 11.054 and noting that a "court may find plaintiff vexatious 'if the defendant shows' no reasonable probability of

prevailing and one of the three litigation histories" and *Drake v. Andrews*, 294 S.W.3d 370, 374 (Tex. App.—Dallas 2009, pet. denied) (Ch. 11 "details a two-step process. First, ***in every instance, the judge must conclude there is no reasonable probability the plaintiff will prevail in his litigation against the defendant.***") (emphasis added).

"A plaintiff may offer evidence to show there is a reasonable probability he will prevail in the litigation, but it is not his burden to do so." *See Drake*, 294 S.W.3d at 375-76. "When the defendant offers evidence sufficient to satisfy the second part of the test relating to litigation history, ***but fails to offer any evidence showing why the plaintiff could not prevail in the suit, the defendant has failed to meet his burden.***" *Id*. (emphasis added).

Because the record fails to support a conclusion of law (or any related finding), regarding the required first step under Tex. Civ. Prac. & Rem. Code § 11.054, demonstrating a showing that Connor could not prevail in the Rule 202 suit, ***at the time Hooks brought his motion*** (not later), the trial court's vexatious litigant order must be reversed. *Id*.; *Amir-Sharif v. Quick Trip Corp.*, 416 S.W.3d at 919.

This conclusion of law or finding of fact may not be waived, as it is required element to be supported by evidence in the record. *See Drake*, 294 S.W.3d at 375-

76; *see, e.g., Leonard v. Abbott*, 171 S.W.3d at 459. Further, the cases purporting to show that Connor has waived a sufficiency of the evidence (either factual or legal) are inapposite. *See Buckeye Ret. Co., L.L.C. v. Bank of Am., N.A.*, 239 S.W.3d 394, 402 (Tex. App.—Dallas 2007, no pet.) (A trial court is not required to make additional findings that are unsupported in the record, that are evidentiary, or that are contrary to other previous findings); *Cotten v. Weatherford Bancshares, Inc.*, 187 S.W.3d 687, 708 (Tex. App.—Fort Worth 2006, pet. denied) ("findings filed by the trial court do not include any element of the defense asserted, then the party's failure to make a timely request for additional findings relevant thereto is a waiver of the right to complain on appeal of the court's lack of such findings"). Hooks' cases, however, do not address the undisputed facts that there is no record evidence of a challenge to the probability of prevailing on the Rule 202 relief, any argument related to such a finding or record evidence, and absolutely no evidence proffered by the litigant – Hooks – with the burden to make a record of sufficient evidence of all of the elements under Chapter 11. Hooks has failed in his burden, and the Court must grant Issue Two. *See Drake*, 294 S.W.3d at 375-76.

REPLY TO ISSUE THREE (restated): The trial court was without jurisdiction to decide the vexatious litigant motion because, before the district court granted

the motion, Connor had filed a cause of action on the same facts and against the same parties and had non-suited her Rule 202 case with prejudice.

Hooks has not demonstrated through facts or law in his brief or in the trial court, that the dismissal with prejudice of the 202 suit allowed the trial court to retain jurisdiction, especially since Connor sued Doug and Elizabeth Hooks in a real lawsuit based on the AVVO review after non-suiting the pre-suit investigation and before the trial court issued its Chapter 11 order.

Hooks' brief does not reasonably address Connor's contention that the Rule 202 suit instantly became moot upon these facts. *See Glassdoor, Inc. v. Andra Grp., L.P.*, 575 S.W.3d 523, 527 (Tex. 2019) ("a case becomes moot during the pendency of the litigation "if, since the time of filing, there has ceased to exist a justiciable controversy between the parties—that is, if the issues presented are no longer 'live,' or if the parties lack a legally cognizable interest in the outcome.") (quoting *Heckman v. Williamson County*, 369 S.W.3d 137, 162 (Tex. 2012)). Rather, if a case becomes moot, the court must vacate all previously issued orders and judgments and dismiss the case for want of jurisdiction. *Heckman*, 369 S.W.3d at 162.

Again, because the actual cause of action filed permits oral depositions in the course of discovery—the request for depositions under Rule 202 were rendered

instantly moot upon the filing of the suit. *See* Tex. R. Civ. P. 199 (depositions upon on oral examination).

Also chiefly in his brief, Hooks only makes ad hominem attacks regarding this issue, and does not address the substance of Connor's claim that: "Rule 202 does not afford a respondent a right to seek 'affirmative relief,' [and that] Appellee's motion was never proper to begin with, but undoubtedly during the time the trial court improperly continued to preside, no order could issue granting Hooks 'affirmative relief' of any kind." See Appellant's Br. at 27; Ape's Br. at 22-23.

Nor does Appellee address the case law cited by Appellant that "[a] nonsuit extinguishes a case or controversy from the moment the motion is filed or an oral motion is made in open court; the only requirement is the mere filing of the motion with the clerk of the court." *See Travelers Ins.*, 315 S.W.3d at 862; *In re Bennett*, 960 S.W.2d 35, 38 (Tex. 1997) (orig. proceeding) (per curiam) ("Such a nonsuit may have the effect of vitiating earlier interlocutory orders and of precluding further action by the trial court, with some notable exceptions.").

Although Hooks appeals to Texas Rule of Civil Procedure 162 (Dismissal or non-suit), the rule says absolutely nothing about a trial court retaining jurisdiction over a Chapter 11 motion after non-suit—the rule only permits the trial court to

proceed on motions for sanctions, attorneys' fees, or costs, which were never filed by Hooks before he filed his Chapter 11 motion. *See* Tex. R. Civ. P. 162 (a non-suit has "no effect on any motion for sanctions, attorney's fees or other costs, pending at the time of dismissal, as determined by the court.").

Hooks provides this Court with no published opinions of any court that indicates that a Chapter 11 motion can or should survive a non-suit of a Rule 202 case. This Court must grant Issue Three, as the trial court lacked jurisdiction to issue any order after the filing of the non-suit and *Connor v. Douglas Hooks, et. al*, No. D-1-GN-19-000428, in the 459th District Court of Travis County, Texas.

REPLY TO ISSUE FOUR (restated): **The trial court erred in applying the vexatious litigant statute to a Rule 202 pre-suit investigation case.**

Hooks provides no on-point authority to this Court that a Rule 202 case is subject to a Chapter 11 motion. *See* Tex. Civ. Prac. & Rem. Code §§ 11.001 (Definitions) (1) ("Defendant" means a person or governmental entity against whom a plaintiff commences or maintains or seeks to commence or maintain a litigation.") (2) ("Litigation" means a civil action commenced, maintained, or pending in any state or federal court."). Hooks relies on *Glassdoor, Inc. v. Andra Grp., L.P.*, 575

S.W.3d 523, 527 (Tex. 2019), but it is inapposite, as the procedural facts are not the same or even similar to this case.

And again, the language of Chapter 11 speaks of "defendants" and "special appearances," which is contrary to the language in Rule 202, which uses Petitioner and Respondent. Likewise, under section 11.051, the statute provides that "the *defendant* may, on or before the 90th day after the date the *defendant* files the original answer or makes a special appearance, move the court for an order… determining that the *plaintiff* is a vexatious litigant…." Tex. Civ. Prac. & Rem. Code § 11.051 (emphasis added). No answer is required, or even permitted, under Rule 202. This Court must decide this issue of first impression with an eye toward the legislative intent of Chapter 11 and the Supreme Court's issuance of the Rule. *See Lippincott v. Whisenhunt*, 462 S.W.3d 507 (Tex. 2015) ("Our objective in construing a statute is to give effect to the Legislature's intent, which requires us to first look to the statute's plain language.").

Lastly, Hooks complains in his brief that Connor did not "preserve" this issue for review in her motion for new trial. Appellee's Br. at 24-25. However, the issue was argued orally to the trial court. See RR at 22 ("And as I stated before, Chapter 11 does not apply to 202 suits because Chapter 11 specifically says that a defendant

can bring a Chapter 11 motion on or before -- on or 90 days after an answer is filed. A 202 suit does not require an answer.").

The trial court had no jurisdiction to enter any orders after Connor non-suited and filed the lawsuit against Hooks. Nothing in Hooks' brief or the law supports jurisdiction of the trial court upon the undisputed facts here. The Court must reverse and render dismissal of Judge Mauzy's order and render dismissal of the Rule 202 suit.

REPLY TO ISSUE FIVE (restated): The vexatious litigant statute is unconstitutional on its face and as applied to Connor.

In her motion for new trial and her new trial brief, Connor argued that the Texas Vexatious Litigant Statute violates the Texas and United States Constitutions. *See* U.S. Const. amend. I and Tex. Const. art. I, § 27. CR 291, 320-328.

Hooks proffers no cases that the statute at issue, Tex. Civ. Prac. & Rem. Code Chapter 11, is constitutional on its face, and does not violate a litigant's right to petition under the U.S. Const. amend. I or Tex. Const. art. I, § 27.

Connor specifically argued to the trial court that the statute is unconstitutional because it infringes upon a citizen's right to petition for redress of grievances under U.S. Const. amends. I, XIV and Tex. Const. art. I, §§ 19, 27, and acts as an

unconstitutional prior restraint of protected First Amendment liberties, among other constitutional infirmities. *See Davenport v. Garcia*, 834 S.W.2d 4, 10 (Tex. 1992) (holding that a prior restraint is ***presumptively unconstitutional*** under the Texas Constitution); *Wolff v. McDonnell*, 418 U.S. 539 (1974) (constitutional basis for the right of access to the courts is also guaranteed by the due process clause).

The right to petition for redress of grievances is inseparable from the right of free speech. *Puckett v. State*, 801 S.W.2d 188, 192 (Tex. App.—Houston [14th Dist.] 1990, writ ref'd) (citing *Johnson v. San Jacinto Junior College*, 498 F. Supp. 555, 578 (S.D. Tex. 1980)). "Although the rights are distinct guarantees, they were cut from the same constitutional cloth and were inspired by the same principles and ideals." *Id*. (citing *Singh v. Lamar University*, 635 F. Supp. 737, 739 (E.D. Tex. 1986)). As general rule, the rights are subject to the same constitutional analysis. *Id*. [2]

Appellant's constitutional rights to access the courts under the United States and Texas Constitutions were infringed, and continue to be infringed upon, by

[2] Texas constitutional provisions guaranteeing freedom of expression and assembly are coextensive with the corresponding federal guarantees. *Reed v. State*, 762 S.W.2d 640, 644 (Tex. App.—Texarkana 1988, pet. ref'd).

application of the Texas Vexatious Litigant Statute. Accordingly, this Court should vacate the trial court's order by granting issue five.

Hooks' brief does not counter Connor's preserved argument and authority that there are no limitations to the right to petition or open courts under the Texas and the United States Constitutions. *See* U.S. Const. amends. I (right to petition) XIV (due process); Tex. Const. art. I, § 13 ("All courts shall be open, and every person for an injury done him . . . shall have remedy by due course of law"); Tex. Const. art. I, § 27; Tex. Const. art. I, § 19 (due course of law); Tex. Const. art. I, § 29 (rights shall remain inviolate).

Nor does Hooks adequately address in his brief Connor's argument that the statute is unconstitutional as applied because the statute continues to infringe on Appellant's rights to redress grievances to this day—as a person so declared may not defeat the declaration, absent his or her single, and timely appeal of an order under Chapter 11. *See* Tex. Civ. Prac. & Rem. Code § 11.101(c). Any such person, who is unsuccessful on appeal, is merely blacklisted for life. These provisions are per se unconstitutional, act as an impermissible prior restraint, and must be found so by this Court.

Connor stands on her opening brief and reference to the extensive legal authority cited and expounded upon in regards to her Issue for Review Five.

CONCLUSION AND PRAYER FOR RELIEF

Should the Court decline to grant all other issues for review, the Court must opine on whether Chapter 11 constitutes an unconstitutional prior restraint on citizens who exercise their rights to redress their grievances pro se and whether the statute unconstitutionally restricted and continues to restrict Appellant's constitutional rights to petition for redress of grievances and her right to open courts.

Appellant further prays that this Court grant Appellant's issues for review and vacate the vexatious litigant order for want of jurisdiction.

Alternatively, Appellant prays that the Court reverse the trial court's vexatious litigant declaration against Connor for harmful error and abuse of discretion and order that the Clerk of this Court furnish the Office of Court Administration with a copy of its opinion and corresponding judgment vacating the order.

Respectfully submitted,

/s/ Madeleine Connor
MADELEINE CONNOR
Texas Bar No. 24031897
P.O. Box 161962
Austin, Texas 78716-1962
Phone (512) 289-2424
Fax (512) 329-5229 (fax)
ATTORNEY PRO SE FOR APPELLANT

CERTIFICATE OF COMPLIANCE

I certify that this document contains 4636 words in the portions of the document that are subject to the word limits of Texas Rule of Appellate Procedure 9.4(i)(3), as measured by the undersigned counsel's word-processing software.

/s/Madeleine Connor
MADELEINE CONNOR

CERTIFICATE OF SERVICE

I certify that this instrument was served by electronic service on the following counsel of record for Appellee on the 18th day of February, 2020: Sherry Rasmus at sgrasmus@rasmusfirm.com.

/s/ Madeleine Connor
Madeleine Connor